

Serial No. 09/648,575

REMARKS

In response to the Final Office Action of November 18, 2004, Applicant seeks reconsideration of the application in light of the following remarks. 4 claims remain pending: (1 independent, and 3 dependant).

Claim Rejections - 35 U.S.C. §103

Claims 1, 3, 4 and 6 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,347,306. ("Swart"). This rejection is respectfully traversed. Swart does not disclose each and every element of the claims as amended. Furthermore, there is no suggestion to combine Swart with any prior art of record (though Examiner does not cite any *specific* additional prior art) in the way that the Examiner sets forth.

As the Examiner notes, with respect to the independent claim, Swart does not disclose 1) the receipt of a fee from the worksite employer, wherein the fee is responsive to the disbursal of funds; 2) the provision of third party goods and services; or 3) a fee based on percentage of a gross payment. Applicants respectfully submit that the Examiner has not presented a clear account of where these three missing elements should be found in the prior art. Nor has the Examiner stated a source of the motivation to combine Swart with prior art.

In this regard, for example, the Examiner states that, "today, there exist many different websites [that] advertise and sell goods/services . . ." Applicant notes that the this is clearly impermissible hind-sight reconstruction on the part of the Examiner, as obviousness turns on the state of the prior art at the time the patent was filed, not what is happening today (five years after the patent was filed). The combination of all the elements of the independent claim, including the receipt of a fee from the worksite employer, wherein the fee is responsive to the disbursal of funds, the provision of third party goods and services through the system, and the collection of a

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fee based on the percentage of a gross payment, are not disclosed any of the cited references, either alone or in combination. Accordingly, the Section 103 rejection should be withdrawn.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned.

This statement does NOT authorize charge of the issue fee. The Commissioner is hereby authorized to charge any other fee specifically authorized hereafter, or any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under 37 C.F.R. §§1.16-1.18 (deficiency only) now or hereafter relative to this Application and the resulting Official document under 37 C.F.R. §1.20, or credit any overpayment to Account No. 19-2814 for which purpose a duplicate copy of this sheet is attached.

Respectfully submitted,

Snell & Wilmer L.L.P.

Date:

9/29/05

By:


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